

SDNY/NYNY
07-CV-5710
Holwell

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NEW YORK STATE RESTAURANT
ASSOCIATION,

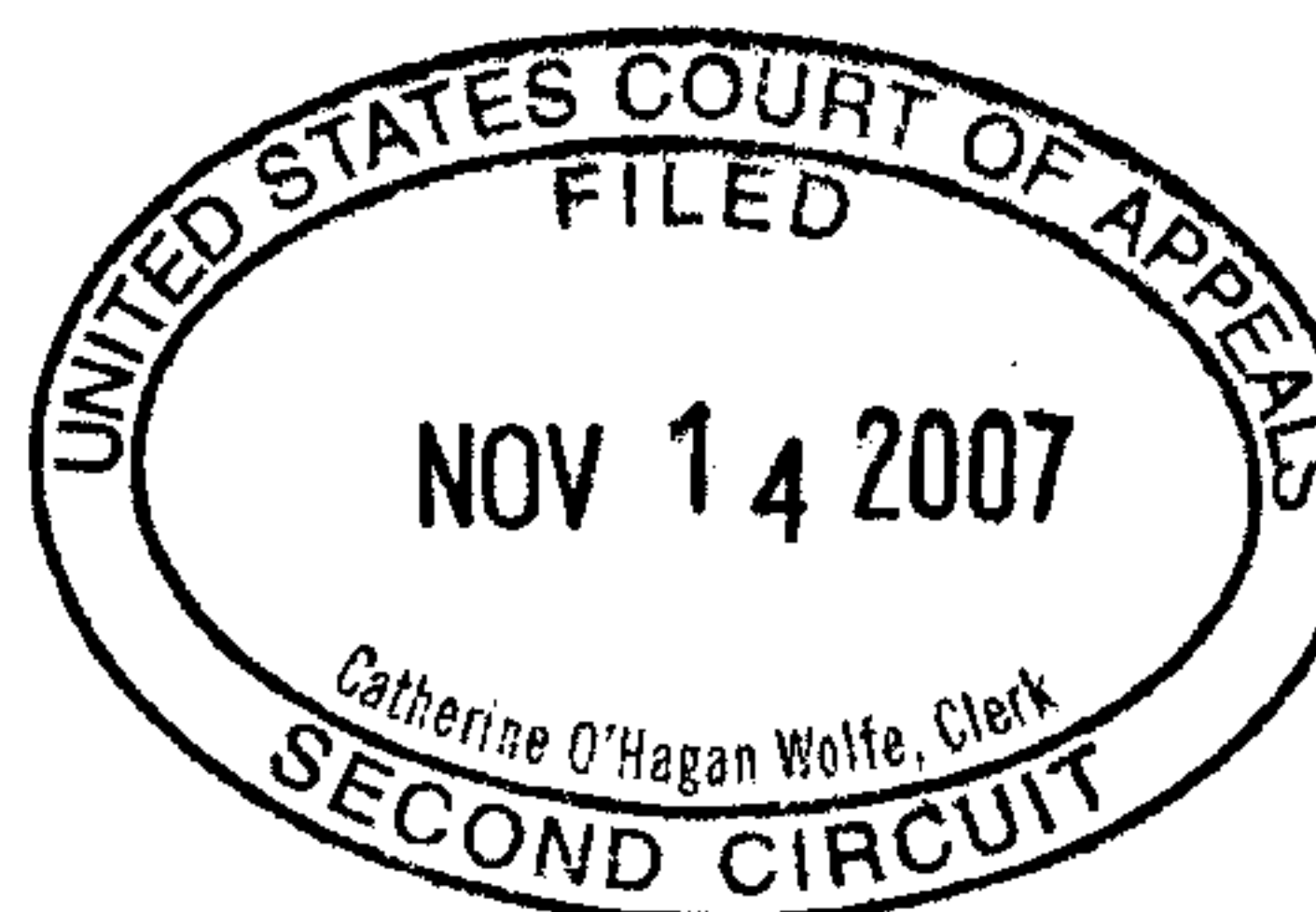
Plaintiff-Appellee,

v.

NEW YORK CITY BOARD OF HEALTH,
NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE,
COMMISSIONER THOMAS R. FRIEDEN,

Defendants-Appellants.

No. 07-4378-cv



STIPULATION AND ORDER

WHEREAS, on September 11, 2007, the District Court entered a Memorandum Opinion and Order holding that Section 81.50 of the New York City Health Code is without effect and permanently enjoining defendants from enforcing it; and

WHEREAS, defendants filed a Notice of Appeal on October 5, 2007; and

WHEREAS, on or about October 24, 2007, the Department of Health and Mental Hygiene issued a Notice of Intention to Repeal and Re-enact Section 81.50 of the New York City Health Code whereby it proposes to enact a new Section 81.50, and has scheduled a Public Hearing for November 27, 2007; and

WHEREAS, the parties agree that if a new Section 81.50 is adopted, the current appeal will be moot.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the undersigned counsel that:

CERTIFIED:

NOV 15 2007

1. The above-captioned appeal is hereby withdrawn from active consideration before the Court. Such withdrawal, in and of itself, shall not operate as a dismissal of the appeal under Rule 42(b) of the Federal Rules of Appellate Procedure.

2. However, upon the adoption of a new Section 81.50, the parties agree that the above-captioned appeal will immediately be dismissed as moot with prejudice by stipulation signed by the parties' counsel and without costs or attorneys fees incurred to date.

3. If a new Section 81.50 is not adopted, appellants shall have until February 1, 2008, to notify the Court that they want to reactivate the appeal by filing a written notice of reactivation with the Clerk of this Court. If appellants do not notify the Court of reactivation by that date, the appeal shall be subject to dismissal.

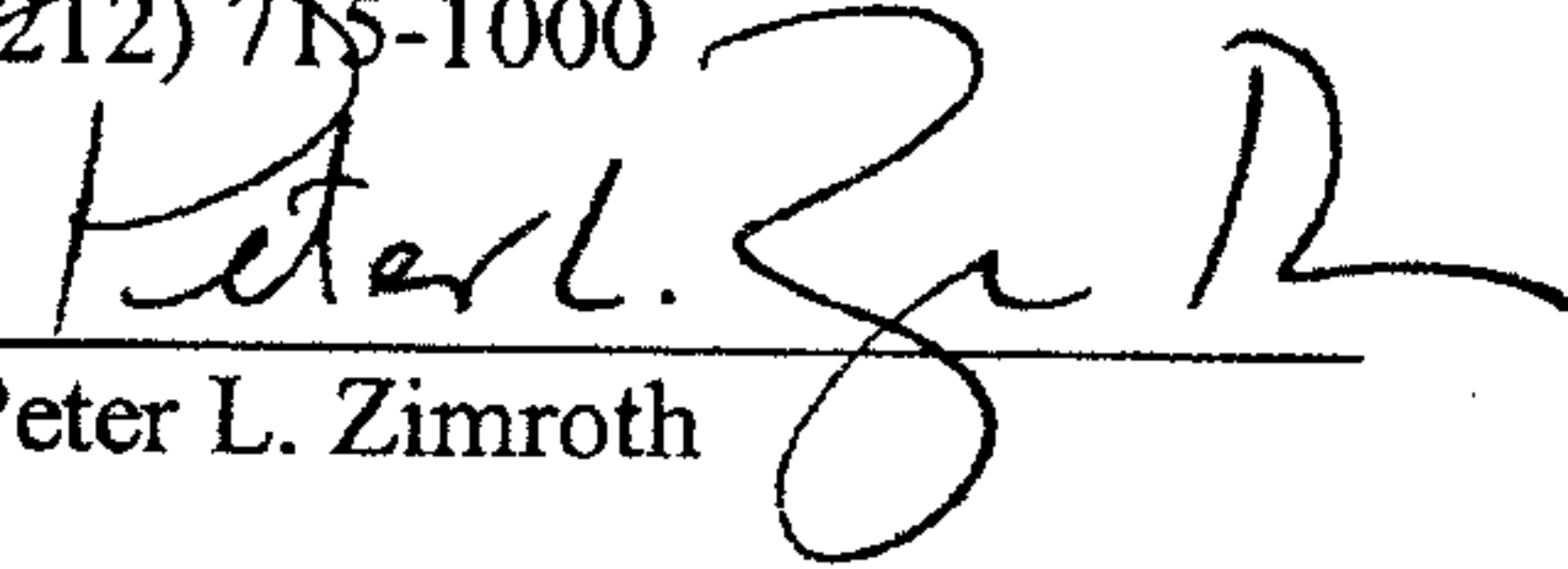
Dated: New York, New York
November 2, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Appellants
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New York, New York 10007
(212) 788-1034

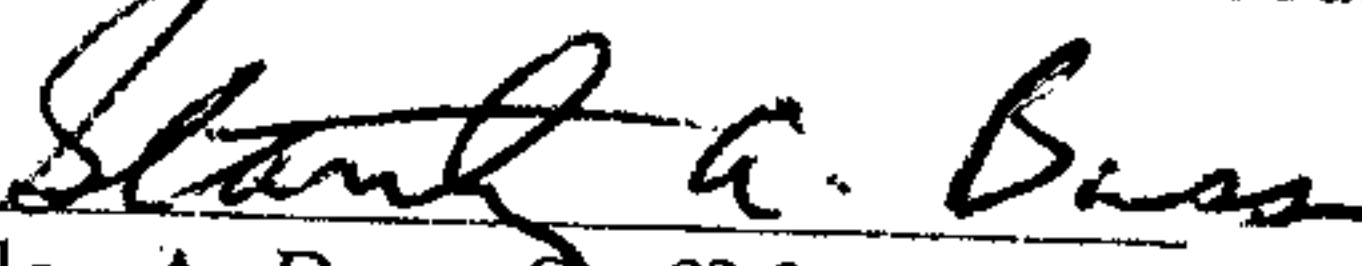

Fay Ng
Assistant Corporation Counsel

ARNOLD & PORTER LLP

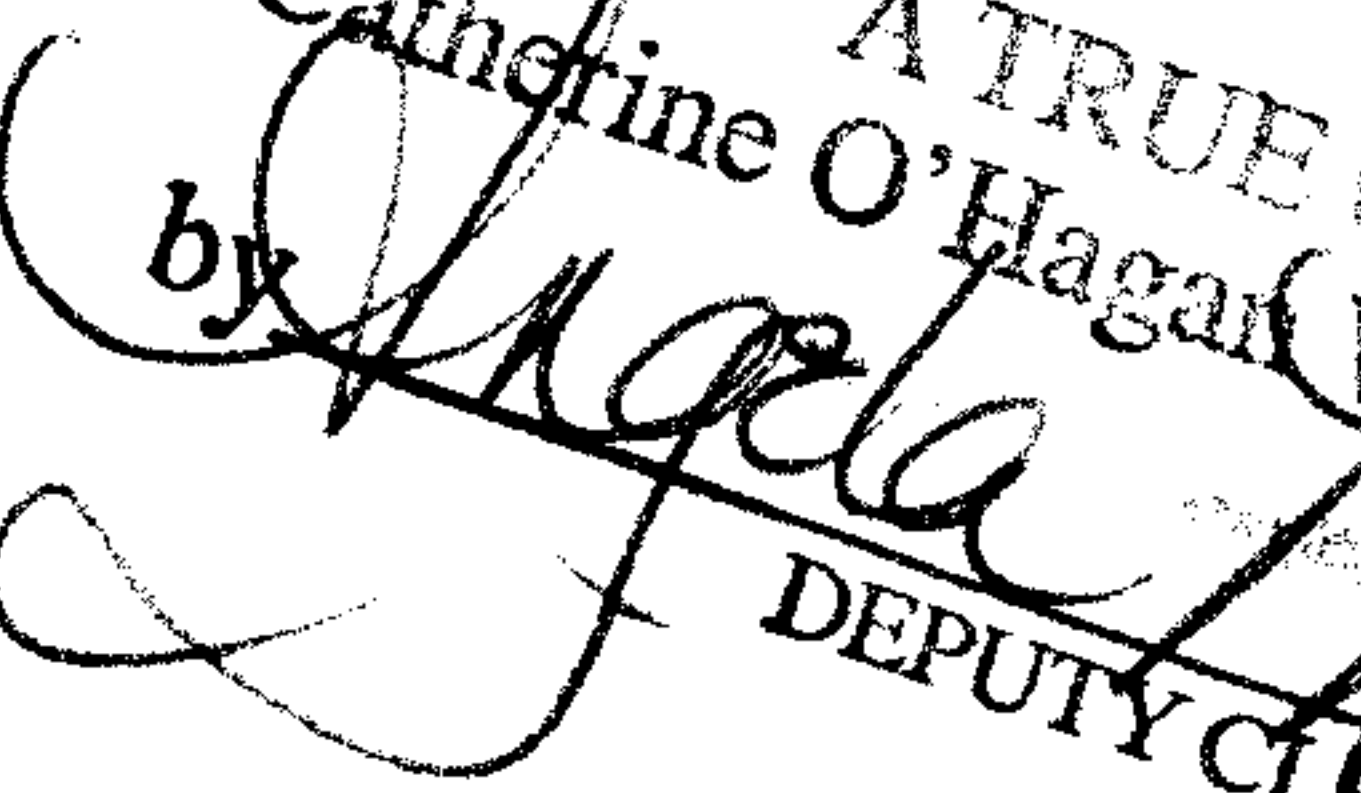
Attorney for Appellee
399 Park Avenue
New York, New York 10022
(212) 715-1000


Peter L. Zimroth

SO ORDERED:

FOR THE COURT
Catherine O'Hagan Wolfe, Clerk of Court
By 
Stanley A. Bass, Staff Counsel

Nov. 14, 2007

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk
by 
DEPUTY CLERK